REMARKS

Reconsideration and allowance in view of the following remarks are respectfully requested.

Rejection of Claims 22-25, 27, 29-32 and 34 Under 35 U.S.C. §103(a)

The Office Action rejects claims 22-25, 27, 29-32 and 34 under 35 U.S.C. §103(a) as being unpatentable over Ezzat et al. (Visual Speech Synthesis by Morphing Visemes) ("Ezzat et al.") in view of Jiang et al. (Visual Speech Analysis with Application to Mandarin Speech Training) ("Jiang et al.") in view of Cox et al. (Speech and language processing for next-millennium communications services) ("Cox et al."). Applicants respectfully traverse this rejection and shall provide further discussion why Cox et al. falls under the exclusion of 35 U.S.C. §103(c).

Applicants thank the Examiner for the response to argument provided on pages 6-8 of the final Office Action. Applicants shall provide on one point upon which we believe the analysis in this final Office Action is erroneous. Notably, on page 7, the final Office Action asserts twice that "Cox et al. qualifies as prior art under Section 102(a) as a printed publication." Applicants note that while we had argued that inasmuch as the reference fails to qualify as prior art under Section 120(a), (b) and (c), that the only possible qualification of prior art is under one of (e), (f) and (g) thus making 35 U.S.C. §103(c) apply. Applicants note that the Examiner has conceded that sub-sections (e), (f) and (g) do not apply in the present case. Accordingly, Applicants note that the only remaining issue is whether Cox et al. qualifies as prior art under Section 102(a). Applicants note that in our previous response that we argued that Section (a) fails to apply because Section 102(a) requires the invention to be described in a printed publication "before the invention thereof by the Applicant for patent." Applicants note that we provide evidence in the previous Office Action that showed that the subject matter of the present application was

reviewed and approved for filing on March 17, 2000 according to AT&T's internal review process and assigned to outside counsel. Applicants respectfully submit that there is simply no rebuttal or no discussion of this evidence of an invention date that predated the Cox et al. publication. Therefore, Applicants respectfully submit that the final Office Action has either conceded the point that we have established an invention date at least as early as March 17, 2000 or has failed to appropriately address this issue.

Applicants note that we have provided certainly a prima facie case that Section 102(a) fails to apply and that the only response to that has been a general declaration that Cox et al. qualifies as prior art under Section 102(a), Applicants submit that our position is correct and furthermore would argue that under the status of the development of the issues, that the final rejection has been premature. MPEP §706.07(c) requires that if the Primary Examiner finds that the final rejection to have been premature, he or she should withdraw the finality of the rejection and continue prosecution. Applicants simply note that under the final rejection, the principles of MPEP §706.07 have not been established. Notably, the MPEP states "before final rejection is in order a clear issue should be developed between the Examiner and Applicant." Applicants also note that the second-to-last paragraph of this section states "the Examiner should never lose sight of the fact that in every case the Applicant is entitled to a full and fair hearing, and that a clear issue between Applicant and Examiner should be developed, if possible, before Appeal." We have provided the substantial evidence supporting our position; there has been no analysis or response to this evidence. Applicants submit that there certainly has not been a "clear issue" that has been developed between Applicant and the Patent Office. Notably, even though we previously presented out argument in the context of 35 U.S.C. §103(c), Applicants certainly note that the foundation of that argument was based upon our position that Cox et al. does not qualify as prior art under Section 102(a) as a printed publication. Therefore, inasmuch as that

foundational position has not been adequately addressed or does not appear to have any substantive response in the Office Action, Applicants either request another Office Action or more appropriately a Notice of Allowance inasmuch as the evidence as it stands on the record appears to possible have been conceded that Cox et al. is not 102(a) art.

Applicants also note that we shall likely seek to coordinate a telephonic interview with the Examiner and look forward to further discussing this matter in the near future.

Rejection of Claims 28 and 35 Under 35 U.S.C. §103(a)

The Office Action rejects claims 28 and 35 under 35 U.S.C. §103(a) as being unpatentable over Ezzat et al. in view of Jiang et al. further in view of Cox et al. and further in view of Brand (Voice Puppetry) ("Brand"). Applicants respectfully traverse this rejection and submit that inasmuch as it has been established that Cox et al. is not prior art under Section 102(a), Applicants submit that these claims are patentable and in condition for allowance.

CONCLUSION

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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By: _____

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